



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE: OPIOID LITIGATION

CIVIL ACTION NO. 21-C-9000 PHARM

THIS DOCUMENT APPLIES TO ALL STATE CASES AGAINST PHARMACIES

**ORDER ESTABLISHING PROCEDURE FOR TIMEKEEPING AT
TRIAL IN THE STATE OPIOID PHARMACY PROCEEDINGS**

In its July 20, 2022, *Order Regarding Trial Logistics* (Transaction ID 67837970) (“Trial Logistics Order”), the Panel directed the parties to “file and serve a joint proposed time keeping order for the Court’s review.” The parties complied and filed a joint order. To coordinate the allotment of time and procedure for timekeeping in trial, the Court **ORDERS** the schedule and procedure set forth below.

1. Pursuant to the Trial Logistics Order, the Panel allocated 24 days for trial of this matter up to and including Friday, October 28, 2022, because of the intervening Columbus Day Holiday. It also indicated that each trial day will begin at 8:30 a.m. and end at 4:30 p.m., and there will be a 30-minute break mid-morning; an hour lunch break; and a 30-minute break mid-afternoon.

2. As provided in the Trial Logistics Order, “[e]ach side shall have 66 hours to present their case, not including one day in total for opening statements, and one day in total for closing statements.”

3. Breaks during the trial day and purely logistical matters addressed at breaks or at the beginning or end of any given trial day shall not be included in the time allocations of either side. The following aspects of trial will count against the speaking side’s time allocation, with time starting when the Court allows the speaking party to proceed:

- a. Live witness examinations;

- b. Deposition designations, consistent with the procedures set forth in paragraphs 7 and 8 below;
- c. Arguments on trial motions; and
- d. Objections related to evidentiary matters.

4. For live proceedings (including live testimony by remote means), each side shall maintain their own calculations of the time spent by either side. The calculation will start when the examining attorney is allowed to proceed, with time counting against the examining side. In the event of an objection, time spent arguing the objection shall count against the speaker (*i.e.*, time spent arguing in favor of the objection shall count against the side making the objection, and time spent arguing against the objection shall count against the side opposing the objection). The calculation shall not include periods when the Court is speaking or when a witness is sworn in. Each side shall use its best efforts and maintain its calculations in good faith in accordance with the procedures set forth in this paragraph.

5. Each side must designate one point person to coordinate and negotiate time calculations. Defendants must coordinate amongst themselves first, and then may jointly negotiate and/or coordinate time tracking and calculations with the State.

6. At 7 PM of each trial day (or at an agreed time thereafter no later than 9 PM if the trial day runs long), the parties shall exchange their calculations of (a) the time spent by Plaintiff (“Plaintiff’s Time”) and (b) the time spent by Defendants (“Defendants’ Time”). If the State’s calculations and Defendants’ calculations within a category are within 15 minutes of each other, the parties shall average their respective calculations, and that average shall constitute the official tally for that day. If the State’s calculations and Defendants’ calculations within a category are more than 15 minutes apart, the parties shall attempt to reach agreement, including by referencing the timestamps on the transcript (if any exist), by referencing the recording of court

proceedings (if available), or by requesting that an official transcript be prepared, if necessary. If agreement cannot be reached, the parties will seek the Court's guidance.

7. For video deposition testimony, the proffering party shall use deposition designation software (*e.g.*, OnCue) to identify "run times" for the proffering party's designations and the opposing party's designations. The run time for the proffering party's designations shall count against the proffering party. The run time for the opposing party's designations (including all completeness and counter-designations) shall count against the opposing party. At its election, the opposing party may use its own deposition designation software to check the proffering party's run times. If the opposing party's estimates differ from the proffering party's estimates by more than five (5) minutes, the opposing party may request a meet-and-confer.

8. For deposition or trial testimony by witnesses whose testimony was not videotaped, the parties shall each generate estimates of run times using automated means, including by reference to publicly available "script timers" set to an average speaking speed. The parties should use their best efforts to eliminate non-spoken words appearing in the transcript (such as a listing of page/line numbers, identification of the speaker, or the letters "Q" and "A" indicating a question and answer). The procedures governing reconciliation of live time set forth in paragraph 7 above shall apply to reconciliation of the parties' estimates of non-video deposition time (*i.e.* averaging any difference in time estimates that is under 15 minutes).

9. Upon the Court's request and at least every Monday morning, the parties shall jointly submit to the Court a chart that lists (a) the total time spent by the Plaintiff and Defendants to date, and (b) the total time that the Plaintiff and Defendants have remaining to date. A template for that chart is attached hereto as Exhibit A.

A copy of this Order has this day been electronically served on all counsel of record via
File & Serve*Xpress*.

It is so **ORDERED**.

ENTERED: August 2, 2022.

/s/ Alan D. Moats
Lead Presiding Judge
Opioid Litigation

/s/ Derek C. Swope
Presiding Judge
Opioid Litigation



EXHIBIT A

IN THE COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE: OPIOIDS LITIGATION

STATE OF WEST VIRGINIA ex rel.
PATRICK MORRISEY, Attorney General,
Plaintiff,

v.

CVS PHARMACY, INC., et al.
Defendants.

STATE OF WEST VIRGINIA ex rel.
PATRICK MORRISEY, Attorney General,
Plaintiff,

v.

WALGREENS BOOTS ALLIANCE, INC., et al
Defendants.

STATE OF WEST VIRGINIA ex rel.
PATRICK MORRISEY, Attorney General,
Plaintiff,

v.

WALMART, INC, f/k/a Wal-Mart Stores, Inc.,
Defendants.

Civil Actio No. 21-C-9000
PHARM

Civil Action No. 20-C-131
PNM

Civil Action No. 20-C-82
PNM

Civil Action No., 20-C-132
PNM

TIME TRACKING WORKSHEET

Trial Day	Plaintiff's Time	Defendants' Time
Day 1 (09/27/2022)		
Day 2 (09/28/2022)		
Day 3 (09/29/2022)		
Day 4 (09/30/2022)		
Day 5 (10/03/2022)		
Day 6 (10/04/2022)		
Day 7 (10/05/2022)		
Day 8 (10/06/2022)		
Day 9 (10/07/20221)		
Day 10 (10/10/2022)		
Day 11 (10/11/2022)		
Day 12 (10/12/2022)		
Day 13 (10/13/2022)		
Day 14 (10/14/2022)		
Day 15 (10/17/2022)		
Day 16 (10/18/2022)		

IN THE COURT OF KANAWHA COUNTY, WEST VIRGINIA

Day 17 (10/19/2022)		
Day 18 (10/20/2022)		
Day 19 (10/21/2022)		
Day 20 (10/24/2022)		
Day 21 (10/25/2022)		
Day 22 (10/26/2022)		
Day 23 (10/27/2022)		
Day 24 (10/28/2022)		
Total Time Allotted	66:00	66:00
Total Time Used	0:00	0:00
Time Remaining	66:00	66:00

